

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL MCCOLE,	:
	:
Petitioner,	: CIVIL ACTION NO. 3:05-CV-1620
	:
v.	:
	:(JUDGE CONABOY)
SUPERINTENDENT ROBERT	:(Magistrate Judge Mannnion)
D. SHANNON, ATTORNEY GENERAL	:
OF THE STATE OF PENNSYLVANIA,	:
	:
Respondents.	:

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ORDER

AND NOW, THIS 22<sup>nd</sup> DAY OF SEPTEMBER 2005, IT APPEARING TO THE  
COURT THAT:

1. Petitioner, an inmate at the State Correctional Institution at Frackville ("SCI-Frackville"), Frackville, Pennsylvania, filed this habeas corpus action pursuant to 28 U.S.C. § 2254 on August 10, 2005, challenging his conviction and sentencing in the Philadelphia Court of Common Pleas, (Doc. 1);
2. The matter was assigned to United States Magistrate Judge Malachy E. Mannion, who issued a Report and Recommendation, (Doc. 4), on August 30, 2005, recommending that the instant petition be transferred to the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 2241(d), Petitioner's motion to proceed *in forma pauperis* ("IFP"), (Doc. 2), be held in reserve for consideration by the United States District Court for the Eastern District of Pennsylvania, (Doc. 4 at 4), and to the extent this action may be

viewed as an attempt to appeal a state court civil matter, the action should be dismissed, (*id.*);

3. Petitioner did not file objections to the Magistrate Judge's Report and Recommendation and the time for such filing has passed.

**IT FURTHER APPEARING TO THE COURT THAT:**

1. When a magistrate judge makes a finding or ruling on a motion or issue, his determination should become that of the court unless objections are filed. See Thomas v. Arn, 474 U.S. 150-53 (1985). Moreover, when no objections are filed, the district court is required only to review the record for "clear error" prior to accepting a magistrate judge's recommendation. See Cruz v. Chater, 990 F. Supp. 375-78 (M.D. Pa. 1998); Oldrati v. Apfel, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998).

2. Our review of the record reveals no clear error.

**ACCORDINGLY, IT IS HEREBY ORDERED THAT:**

1. The Magistrate Judge's Report and Recommendation, (Doc. 4), is ADOPTED;
2. Petitioner's Petition for Writ of Habeas Corpus, (Doc. 1), is TRANSFERRED to the United States District Court for the Eastern District of Pennsylvania;
3. Petitioner's Motion to Proceed IFP, (Doc. 2), is held in reserve for consideration by the United States District Court for the Eastern District of Pennsylvania;
4. To the extent this Petition is an attempt to appeal the

state court's decision issued in a civil matter, the  
action is DISMISSED;

5. There is no basis for the issuance of a certificate of  
appealability;
6. The Clerk of Court is directed to close this case.

S/Richard P. Conaboy  
RICHARD P. CONABOY  
United States District Judge